

**REMARKS**

Claims 2, 4, 7 and 10 are pending in the present application, and are rejected. Claims 2, 4, 7 and 10 are herein amended. No new matter has been presented.

**Double Patenting**

Claims 2, 4, 7 and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 11/436,510.

Applicants submit that this is an improper rejection, prohibited by the Manual of Patent Examining Procedure (MPEP). 35 U.S.C. §121 prohibits the use of a patent issuing on an application with respect to which a restriction requirement has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent.

The claims in Application No. 11/436,510 were filed as a result of the restriction by the Examiner in the present application. A constructive restriction of claims in the present application was made by the Examiner on December 27, 2005, which necessitated the filing of Application No. 11/436,510.

Therefore, Applicants submit that the double patenting rejection should be withdrawn.

**Claim Rejections - 35 U.S.C. §103**

Claims 2, 4 and 7 are rejected under 35 U.S.C. §103(a) as being obvious over Clarkson et al. (US Patent Application 2001/0036964 A1) in view of McCue et al. (US Patent 5,403,587).

The Examiner admits that Clarkson et al. fails to teach citronella, terpinyl acetate, citronellol, or  $\beta$ -pinene in the composition. The Examiner concludes that it would have been obvious to combine the antimicrobial compositions taught by Clarkson and McCue et al. with each other.

Claim 10 is rejected under 35 U.S.C. §103(a) as being obvious over Clarkson et al. (US Patent Application 2001/0036964 A1) and McCue et al. (US Patent 5,403,587) as applied to claims 1-9 in view of Jensen et al. (US Patent 2,550,255).

Applicants herein amend the claims to clarify the invention. The amendment is the addition to claims 2, 4, 7 and 10 “wherein a weight ratio of said 1,2-octanediol and said materials is between 0.5:1 and 10:1”, which is supported by the description of “they are compounded to satisfy the weight ratio to be between 0.5:1 and 100:1, more preferable between 1:1 and 10:1” in paragraph [0042] of the present specification.

Applicants disagree with the rejections and submit that the claimed invention, as herein amended, is not directly taught by the cited references, alone or in combination. Furthermore, Applicants point to proof of unexpectedly superior results associated with the presently claimed invention to overcome any rejection for obviousness.

Applicants note that US Patent Application No. 2001/0036964A1 (Clarkson et al.) relates to an anti-microbial composition comprising polyhydric alcohol or derivative. Particularly

preferred materials are 1,2-pentanediol, 1,2-hexanediol, and 1,2-octanediol, as noted in paragraph [0065]. Typical amounts of the polyhydric alcohol are between 1 and 20% by weight, as noted in paragraph [0062]. The compositions and methods of the invention are of greatest benefit when used on the most malodorous areas of the human body, as noted in paragraph [0001]. Fragrance is also a desirable additional component in the compositions of the invention, as noted in paragraph [0086].

Applicants note that US Patent No. 5,403,587 to McCue et al., the essential oil include citronella, eucalyptus, peppermint, camphor, as noted in lines 56-59 in column 1. Essential oils have been mentioned for fragrant, medicine, antiseptic and insecticidal uses, as noted in lines 44-46 in column 1. The compositions include essential oils having antimicrobial properties, as noted in lines 8-9 in column 1. The essential oil is used in an amount between 0.02 to 5% by weight, as noted in lines 10-14 in column 3.

Applicants note that US Patent No 2,550,255 to Jensen et al. relates to the preparation of a potent antibiotic substance, and it has to do more particularly with the concentration of an antimicrobial substance of plant origin. As a result of the search for antibacterial agents, naturally occurring antibiotic substances have been prepared from plants, animal tissues, molds, antinomyces, yeast and bacteria, as noted in line 34, column 1. Yet another object of the invention is to provide an antibiotic substance which any be employed as an effective preservative for food products, as noted in line 53, column 1.

With respect to rebutting the rejections, the Examiner asserts that Applicant has only provided a showing of synergism between 1,2-octanediol and citronellol (Embodiment 1 in

Table 3 of the specification). The Examiner incorrectly asserts that the other embodiments are drawn to *other 1,2-alkanediols that do not include the claimed 1,2-octanediol*. The Examiner characterizes the presented data as only showing a comparison of 1,2-octanediol with citronellol. The Examiner emphasizes that a single data point between 1,2-octanediol and citronellol showing synergism cannot support the full scope of the claimed fragrances, such as citronellal, terpinyl acetate, beta-pinene, and eugenol.

The Examiner requests that Applicant show more than a single data point, specifically the synergistic data between 1,2-octanediol and the other claimed fragrances, such as citronellal, terpinyl acetate, beta-pinene, and eugenol.

Applicants do not understand the Examiner's request, because such data already exists in the file wrapper of this application. Even the original specification presents synergy data between 1,2-octanediol and each of citronellal, terpinyl acetate, beta-pinene, and eugenol.

Applicants note that Figure 3 graphically shows the synergistic effect between synergistically effective amounts of 1,2-octanediol and eugenol, as described in specification.

Figure 4 graphically shows the synergistic effect between synergistically effective amounts of 1,2-octanediol and citronellal, as described in specification.

Figure 5 graphically shows the synergistic effect between synergistically effective amounts of 1,2-octanediol and terpinyl acetate, as described in specification.

Figure 6 graphically shows the synergistic effect between 1,2-octanediol and citronellol.

Figure 7 graphically shows the synergistic effect between 1,2-octanediol and beta-pinene, as described in specification.

Thus, the present inventions are not supported by a mere “single data point” between 1,2-octanediol and citronellol showing synergism. The synergistic data between 1,2-octanediol and each of the claimed perfumes are shown herein. Thus, the present invention supports the full scope of the claimed fragrance, such as citronellal, terpinyl acetate,  $\beta$ -pinene.

Applicants believe that the Examiner may be confused because Example 1, described on page 14 of the specification, describes a mixture including 1,2-octanediol, but Examples 2 and 3 described mixtures including 1,2 hexanediol and 1,2-pentanediol, respectively. The Examiner may have confused these Examples with the “Embodiments” of the invention. In any event, Applicants request reconsideration of the rejections, especially in light of the amendments and arguments noted below.

Further to the above, Applicants submit herewith a declaration presenting further demonstration of unexpected effects obtained by combining 1,2-octanediol and the claimed perfumes in the weight ratio, between 0.5:1 and 10:1 (page 6 to 13). Thus, it obviously shows that the composition including 1,2-octanediol and the claimed perfumes between 0.5:1 and 10:1 by weight has synergistic effect.

Viewing Clarkson et al., McCue et al. and Jensen et al., polyhydric alcohols (preferred compound; 1,2-octanediol) and perfumes are described in Clarkson et al. and McCue et al., which show that essential oils, such as citronella oil, are utilized for fragrance. However, the claimed perfumes in the present invention are not described in Clarkson et al. and McCue et al. Preliminary, a composition of Clarkson et al. and McCue et al. do not indicate the mixture ratio (w/w %) between 1,2-octanediol and the claimed perfumes. In addition, a combination of 1,2-

alkanediol and perfumes disclosed in McCue et al. does not have synergistic effect as described in the declaration.

In conclusion, the synergistic effect by combining 1,2-alkanediol and the claimed perfumes cannot be easily expected by one of ordinary skill in the art from the description of Clarkson et al. and McCue et al. The method of the combination of 1,2- alkanediol and the claimed perfumes in the particular weight ratio (0.5:1-10:1) would not have been assumed from the description of Clarkson et al. and McCue et al. by one of ordinary skill in the art to have the unexpectedly superior results as proven herein. Applicants submit that the demonstration of unexpectedly superior results overcomes the rejection under §103(a).

Accordingly, the present invention should be seen as patentably distinguished over the cited references, alone or in combination.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

Application No. 10/500,358  
Attorney Docket No. 042276

Amendment under 37 C.F.R. §1.111  
Amendment filed March 4, 2009

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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Enclosures: Declaration under 37 C.F.R. §1.132 dated February 25, 2009